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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

**WRITTEN EX PARTE PRESENTATION**

Re: **Review of the International Settlements Policy**  
**IB Docket No. 98-148**

Dear Ms. Salas:

MCI WorldCom, Inc. ("MCI WorldCom") hereby sets forth a revised proposal for determining when the International Settlements Policy ("ISP") should be removed for arrangements with dominant foreign carriers in WTO Member countries.<sup>1</sup> On August 6, 1998, the Commission released a Notice of Proposed Rulemaking ("Notice") in the above captioned proceeding proposing to amend its ISP. Among other things, the Commission sought comment on whether it should eliminate the ISP for arrangements between U.S. carriers and foreign carriers from WTO member countries that have market power in their home markets.<sup>2</sup> The Commission sought to identify routes that are sufficiently competitive or have low enough settlement rates so that lifting the ISP would not result in competitive distortion on the relevant international route. The Commission sought comments on its proposal to eliminate the ISP on routes where the Commission has authorized international simple resale ("ISR").<sup>3</sup>

MCI WorldCom continues to support the Commission's effort to identify routes where it is appropriate to eliminate the ISP for arrangements with dominant foreign carriers. As MCI WorldCom demonstrated in its Comments, however, the Commission's proposal to remove the ISP for arrangements with dominant carriers on routes where ISR has been authorized would result in significantly increased one-way inbound bypass of above-cost settlement rates.<sup>4</sup> MCI WorldCom therefore proposed in its Comments that

<sup>1</sup> MCI WorldCom fully supports the Commission's proposal to remove the ISP for all arrangements between U.S. carriers and non-dominant foreign carriers.

<sup>2</sup> Notice at ¶ 25.

<sup>3</sup> Id. at ¶ 27.

<sup>4</sup> See MCI WorldCom Comments, IB Docket No. 98-148, filed September 16, 1998, at 4-6.

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the ISP be eliminated on routes in which: (1) at least 50 percent of the traffic on the route is settled within 2 cents of the best practices rate; or (2) the foreign market affords U.S. carriers equivalent ISR opportunities.<sup>5</sup>

MCI WorldCom recognizes that the Commission may be reluctant to accept this proposal. The Commission is attempting to balance its laudable goal of removing the ISP on all routes where it is no longer necessary while at the same time preventing competitive distortion in the United States. Therefore, MCI WorldCom proposes the following alternative standard as an effective way to strike this balance.

Proposed Standard for Removal of the ISP for Arrangements with Dominant Foreign Carriers on a Route

MCI WorldCom proposes that the Commission eliminate the ISP for arrangements between U.S. carriers and dominant foreign carriers in WTO Member countries on routes where **50 percent or more of the U.S.-billed traffic is settled at a rate that is at least 25 percent below the relevant benchmark rate for that particular route.** Under this standard, the threshold rates for removal of the ISP for arrangements with dominant foreign carriers would be as follows:

Benchmark Rate Categories	Threshold Rate for Removal of ISP
15 cents	11.25 cents
19 cents	14.25 cents
23 cents	17.25 cents

For example, the ISP would continue to apply to all arrangements between U.S. carriers and a dominant foreign carrier in a country to which the Commission's 19 cent benchmark applies until 50 percent of the traffic on the route is settled at or below 14.25 cents, *i.e.*, 25 percent below 19 cents.

MCI WorldCom's Proposal Would Serve the Public Interest

MCI WorldCom's proposal has several benefits. First, it establishes a simple bright line test that U.S. and foreign carriers can easily understand and apply. Application of the test would not require the Commission or other parties to examine the relevant foreign market. Second, it would prevent distortion of competition in the U.S. market through inbound bypass of above-cost settlement rates. Because the threshold rates for removal of the ISP would be closer to the actual cost of terminating international traffic than the benchmark rates, dominant foreign carriers would have diminished incentive and ability to distort competition on the route through one-way inbound bypass. Moreover, the Commission currently presumes that inbound bypass has occurred and that it should take enforcement action when the ratio of outbound to inbound traffic increases

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<sup>5</sup> *Id.* at 6.

by more than 10 percent.<sup>6</sup> Maintaining the ISP for arrangements with dominant foreign carriers that have not decreased their settlement rates below the benchmark will preserve the effectiveness of this safeguard.

Third, MCI WorldCom's proposal would give dominant foreign carriers an incentive to lower their settlement rates with U.S. carriers below the benchmark. If the ISP were removed when settlement rates reach benchmark, then there would be no incentive on the part of foreign carriers that do not face competitive pressure in their home markets to lower rates any further. Fourth, the threshold rates are realistically achievable by dominant foreign carriers. It is likely that some foreign carriers would choose to lower their settlement rates 25 percent below the benchmark rate to gain the flexibility resulting from elimination of the application of the ISP to their arrangements with U.S. carriers. Fifth, dominant foreign carriers would be in full control of whether or not the ISP continues to apply to their arrangements with U.S. carriers – they need only decrease their settlement rates with U.S. carriers to the threshold level to avoid application of the ISP. If they choose not to lower their rates, the ISP will continue to apply just as it has for many years.

Finally, the proposed standard will have the effect of identifying those routes on which dominant foreign carriers pose a diminished threat of competitive distortion in the U.S. international services market. The dominant foreign carriers that reduce their settlement rates below the benchmark enough to meet the proposed standard will in many cases be those dominant foreign carriers that are subject to actual competitive pressure in their home markets. Moreover, the competitive safeguard proposed herein will become increasingly essential over the next several years. Almost every foreign carrier that currently has a settlement rate with U.S. carriers that is at or below the relevant benchmark rate faces actual competitive pressure in its home market and therefore poses a limited threat of distorting competition in the U.S. market. Over the next four years, however, many of the dominant foreign carriers that reach the benchmark will face little or no competitive pressure in their home markets and as a result these carriers will retain significant incentive and ability to distort competition in the U.S. international services market.

#### MCI WorldCom's Proposal is Consistent with The Commission's Authority

The Commission has ample authority to adopt the standard described herein. The standard is based on the benchmark rates and categories established by the Commission in the *Benchmarks Order*, which was upheld in its entirety on appeal.<sup>7</sup> The U.S. Court of Appeals for the D.C. Circuit held that the benchmark rates and categories established by the Commission were reasonable.<sup>8</sup> In reaching this conclusion, the court recognized that

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<sup>6</sup> See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23891, 23927-28 (1997).

<sup>7</sup> *Regulation of International Settlement Rates*, 12 FCC Rcd 19806 (1997) *aff'd. sub nom.*, *Cable and Wireless v. FCC*, No. 97-1612 (D.C. Cir., Jan. 12, 1999).

<sup>8</sup> *Cable & Wireless v. FCC*, No. 97-1612, slip op. at 14, 16 (D.C. Cir., Jan. 12, 1999) ("*C&W*").

the Commission can take action to prevent anti-competitive conduct and competitive distortion in the United States.<sup>9</sup> Furthermore, the Commission noted repeatedly in the *Benchmarks Order* that the benchmark rates are still above-cost.<sup>10</sup> The court in *C&W* also noted that the benchmark rates may in fact *overcompensate* many foreign carriers.<sup>11</sup>

Therefore, because the benchmark rates are clearly above-cost, establishing a mechanism that sets a threshold rate that is closer to cost than the benchmark rate in order to prevent a well-recognized threat of competitive distortion in the United States -- one-way inbound bypass -- is a reasonable regulatory action. Moreover, the Commission is under no obligation to further deregulate accounting rate arrangements between U.S. and foreign carriers. Indeed, the Commission could choose to require continued application of the ISP to all arrangements between U.S. carriers and dominant foreign carriers. The adoption of the proposed mechanism set forth above would not impose any additional burdens on any carriers seeking to originate or terminate traffic to and from the United States. To the contrary, it provides foreign carriers with an opportunity to obtain further flexibility in their dealings with U.S. carriers.

In sum, adoption of a lower threshold rate for removal of the ISP on arrangements between U.S. carriers and dominant foreign carriers is a reasonable and achievable regulatory safeguard that is necessary to prevent competitive distortion in the U.S. international services market. Therefore, if the Commission declines to adopt MCI WorldCom's proposal to prevent one-way bypass set forth in its pleadings, MCI WorldCom urges the Commission to adopt the proposal described herein.

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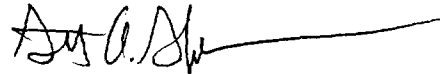
<sup>9</sup> See, e.g., *id.*, slip op. at 6 (recognizing the FCC's concern that above-cost settlement rates create the potential for competitive distortion in the U.S. market). See also *id.*, slip op. at 19 ("we see no grounds for disturbing the Commission's informed judgment that the risk of price squeeze behavior presents a timely problem requiring immediate preventive measures"), slip op. at 20 (upholding the use of the best practice rate for enforcement "because the [best practice] rate is meant to deter anti-competitive conduct.")

<sup>10</sup> 12 FCC Rcd 19806 at ¶ 69. See also *id.* at ¶ 87.

<sup>11</sup> *C&W*, slip op. at 15.

An original and two copies of this Notice are being filed with the Secretary of the Federal Communications Commission in accordance with Section 1.1206(b)(1) of the Commission's rules. If you have any questions, please do not hesitate to contact Bob Koppel at (301) 212-7099 or Scott Shefferman at (202) 721-2585.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott A. Shefferman", followed by a long horizontal line extending to the right.

Robert S. Koppel  
Scott A. Shefferman  
MCI WorldCom, Inc.  
International Regulatory Affairs

cc: Rebecca Arbogast (International Bureau)  
Adam Krinsky (International Bureau)  
Robert McDonald (International Bureau)  
Kathryn O'Brien (International Bureau)